Civil Appeal No. 48784-5
(as consolidated with Appeal No. 48910-4)

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

MARK OLLA, an individual,

Appellant-Plaintiff

v.

ROBERT H. WAGNER, as an individual and as a member of THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE ROBERT H. WAGNER PENSION PLAN"); THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN; DIANNE WAGNER, as an individual and as a member of THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN; and DOES 4 through 15, Inclusive,

Respondent-Defendants,

and

ROBERT H. WAGNER, as an individual and as Trustee of THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE ROBERT H. WAGNER PENSION PLAN"); and DOES 3 through 50, Inclusive,

Respondent-Defendants.

APPEAL FROM KITSAP COUNTY SUPERIOR COURT
(Hon. Judges William C. Houser, Kevin D. Hull)

APPELLANT'S REPLY BRIEF FOR REVERSAL

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action's TLA / Regulation Z extended statutory rights of rescission claims, for which reason OJO are void

6. Whether Olla's instant efforts at post-judgment Relief of Vacatur of OJO challenge any issue decided by the September 13, 2011 Unpublished Opinion, Appeal No. 40367-6-II (OLLA v. WAGNER ET AL.) affirming OJO, such that Vacatur, post-mandate, might be barred under RAP 12.2

7. Whether Judge Hull directly and Judge Houser indirectly denied Vacatur of OJO in abuse of judicial discretion as was manifestly unreasonable, and exercised based on untenable grounds and on untenable reasons, and, in exercise of discretion over matters in which there was no discretion since OJO were void for both because they had been in manifest injustice and in violation of Olla's U.S. Constitutional Fourteenth Amendment right to procedural due process of law

8. Whether Subject Judgments and Orders were products of Respondents' extrinsic Fraud upon the Court, including concealment of the grounds on which Olla sought Vacatur of OJO, and bad-faith false assertion that Olla's CR 60 (c) action involved re-litigation, and his CR 60 (b) motions to vacate were based on errors of law

A) in overall Reply to Respondents' Brief AND with respect to all Issues in Reply:

Olla furnished both Judge Houser and Judge Hull with evidence proving that the Bridge Loans are illegal and void as a matter of public policy, and thus that REPSA is illegal and void as a matter of public policy, which proofs separately and together establish extraordinary circumstances of irregularity extraneous to the action of Judge Hartman in indication that OJO are in manifest injustice to Olla

B) in Reply to Respondents' issue no. 1 {whether Judge Houser Order of Dismissal was erroneous} AND all Issues in Reply:

Judge Houser's Order of Dismissal and subsequent Summary Judgment on Respondents' counter-claims was in judicial error warranting Reversal on

II. TABLE OF AUTHORITIES

CASES:

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III. INTRODUCTION TO REPLY

The Respondents' Brief operates on false premises[1] and presents only false assertions in arguing Respondents' contention that Judge Houser's February 5, 2016 Order of Dismissal (CP 4757-4758) in Kitsap County Superior Court ("KCSC") Consolidated Case #15 2 01985 8, Judge Houser's March 24, 2016 entry of Summary Judgment and Orders (CP 4873-4878) in favor of the Respondents' February 4, 2016 Counter-Claims (CP 4723-4755) and Judge Hull's March 7, 2016 Judgment and Orders in KCSC Case #09 2 01654 4 in Denial (CP 1895-1901) of Olla's two Motions to Vacate on the basis of Judge Hull's March 7, 2016 Findings of Fact and Conclusions of Law ("FNFCL") (CP 1895-1901) (all said Judgments and Orders, collectively, "Subject Judgments and Orders") be affirmed[2].

Moreover, Respondents' Brief does not address Olla's stated issues on Appeal (Appellant's Brief pgs. 8-17) as raised by Olla's Assignment of

[1] Respondents have on their title page misrepresented the parties, inter alia, the name "ROBERT J. WAGNER", where in fact both ROBERT J. WAGNER, ROBERT J. WAGNER PENSION PLAN and DIANNE WAGNER are parties. Thus, they fraudulently try to hide claims directed against said pension plan and Defendant Dianne Wagner as an individual and as a member of RHWPP (15 2 01441 4 CP 2644), where both Respondent-Defendants were included consistent with the deeply embedded common law principle that, in an action to set aside a contract or a judgment enforcing that contract, all parties who may be affected by the determination are indispensable (see Crouse-Hinds Co. v Internorth, Inc., 634 F2d 690, 701 [2d Cir 1980], citing Lomayaktewa v Hathaway, 520 F2d 1324 ,1325 [9th Cir 1975]

[2] See Respondents' Brief, section IV, subsection 17 at p.16.

Errors (Appellant's Brief pgs. 6-8). Olla's Appeal is fully meritorious rather than frivolous[3]

The first of the false premises is that Olla's Consolidated Case before Judge William C. Houser ("Judge Houser") lodged causes of action and related claims tantamount to re-litigation of the causes of action and related claims presented by Olla's Complaint filed June 25, 2009 (CP 1-144) in his original case. That original case was dismissed by and through OJO, based upon Judge Hartman's adoptive Findings of Fact and Conclusions of Law (CP 1250-1265) that, inter alia, Olla's Federal Truth In Lending Act (15 U.S.C. §§ 1601 Et Seq.) ("TLA"), as amended by 1994 Home Ownership Equity Protection Act (15 U.S.C. § 1639, 12 C. F. R. § 226.32 Et Seq.) ("HOEPA") Regulation Z (12 C.F.R. § 226 Et Seq.)-implemented extended statutory rights of rescission as to each of the Bridge Loans presented in the original Complaint's First Cause of Action (CP 55-59) as a basis on which to seek, as its Fourth Cause of Action, Quiet Title (CP 77-79) had been released by Olla by and through the Real Estate Purchase and Sale Agreement ("REPSA"), which purports to have been in settlement of Olla's payment obligations under the three Bridge Loans extended to Olla by the

[3] Olla's Appeal is the opposite end of the spectrum from a frivolous Appeal, which is one that "is so totally devoid of merit that no reasonable possibility of reversal exists." Hernandez v. Stender. 2014 WL 10598094 (2014) at *4 (citing Protect the Peninsula's Future v. City of Port Angeles, 175 Wn. App. 201, 220, 304 P.3d 914, review denied. 178 Wn.2d 1022, 312 P.3d 651 (2013)).

multiple-member pension plan Respondent-Defendant, THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE ROBERT H. WAGNER PENSION PLAN").

But this asserted premise contradicts the legal fact that Olla's Consolidated Case was a CR 60 (c) independent action at Equity for Vacatur of original KCSC January 15, 2010 Judgment and Orders ("OJO") as entered by Judge Russell W. Hartman ("Judge Hartman") (CP 2644-3460, 3462-3952) OJO (CP 2732-2745; Appellant's Brief pgs. 48-49) based upon extraordinary circumstances involving irregularities extraneous to the action of the court (i.e. Judge Hartman) indicating that OJO were in manifest injustice to Olla for which reason OJO must vacated pursuant to CR 60 (b) (11) for relief from a judgment or order[4] (see Appellant's Brief pgs.57-58, 59); OJO, void for this reason as well as for the fact that they were entered in violation to Olla's Constitutional Fourteenth Amendment right to procedural due process of law, must also be vacated pursuant to CR 60 (b) (5), such standards for Vacatur as recognized by prevailing Washington State case law authority (Appellant's Brief pgs. 51-52, 52-57), and so sought in the context where

[4] CR 60(b)(11) is a catch-all provision that permits vacating judgment for "[a]ny other reason justifying relief. . . ." The rule is confined to "'situations involving extraordinary circumstances not covered by any other section of the rule.'" Flannagan v. Flannagan. 42 Wn. App. 214, 221, 709 P.2d 1247 (1985) (guoting State v.Keller. 32 Wn. App. 135, 140, 647 P.2d 35 (1982)). The extraordinary circumstances must involve "'irregularities which are extraneous to the action ... or go to the questionof the regularity of its proceedings.'"]d, (quoting Keller at 141).

none of said grounds challenge a specific issue already decided by this Court of Appeals in Olla's first Appeal from KCSC case #09 2 01654 4 (see September 13, 2011 Unpublished Opinion in re Appeal No. 40367-6-II (OLLA v. WAGNER ET AL.), discussed infra[5].

The second false premise in Respondents' Brief is that the merger and bar effects of Res Judicata and its collateral estoppel aspects applied to the matters and objects of said CR 60 (c) action at Equity for Vacatur of OJO before Judge Houser and also Olla's two Motions to Vacate OJO before Judge Kevin D. Hull ("Judge Hull"), asserted by Respondents in full knowledge that said action and two Motions sought Vacatur of the January 15, 2015 Judgment and Orders ("OJO"), as well as that, even had Olla *not* filed his Consolidated Case as CR 60 (c) action, and Res Judicata been relevant, the preclusive effects of Res Judicata could not be applied.

The third false premise in Respondents' Brief is that Vacatur has been sought by Olla on the basis of *errors of law* made by Judge Hartman in rendering OJO. But Olla's aforementioned grounds for Vacatur of OJO do not implicate *errors of law*. The aforementioned extraordinary circumstances involving irregularities extraneous to the action of Judge

[5] Just because Olla's Consolidated CR 60 (c) action contained additional causes of action in the interests of judicial economy and per RAP 12.2, e.g. Olla's September 28, 2015 Brief also seeking in its Fourth, Fifth and Sixth Causes of Action (CP 3533-3539) declaratory relief and rescission following Vacatur of OJO, and, in its PRAYER FOR RELIEF section (CP 3540-3547), seeking equitable damages based upon unjust enrichment, does not convert said Action at Equity to a subsequent lawsuit seeking to re-litigate issues.

Hartman in indication OJO were in manifest injustice to Olla are established by the fact that each of the Bridge Loans violated one or more statutory prohibitions set forth by the Washington State Mortgage Brokers Practices Act (RCW 19.146 Et Seq.) MBPA and TLA, and REPSA, and are each therefore null and void contracts as a matter of public policy.

IV. ISSUES RAISED IN THIS REPLY BRIEF

1. Whether Olla's Consolidated Case before Judge Houser was a CR 60 (c) independent action at Equity for Vacatur in and of Judge Hartman's original judgments and orders ("OJO")

2. Whether the causes of action and related claims lodged by Olla's Consolidated independent action at Equity for Vacatur of OJO constitute re-litigation of the causes of action and related claims that were before Judge Hartman in Olla's original action of 2009-2010

3. Whether under CR 60 (b) (11), Washington state courts must vacate a judgment or order where there exist extraordinary circumstances involving irregularity extraneous to the action of the court, indicating that judgment or order to be in manifest injustice to the motioning party; and whether a judgment or order that is in manifest injustice is void and must be vacated pursuant to CR 60 (b) (5)

4. Whether Vacatur sought by Olla under CR 60 (b) (11) strictly according to the standard of manifest injustice indicated by extraordinary circumstances extraneous to the action of the Court in any way implicates errors of law as a basis for Vacatur

5. Whether Olla provided Judge Hull and Judge Houser documentary proof and pertinent legal authority that OJO were in manifest injustice to Olla since each of the Bridge Loans had been illegally made, arranged and / or extended in violation of statutes, MBPA and / or TLA; for which reason those Loans and REPSA intimately related to said illegal Loans are null and

void as a matter of public policy; moreover, REPSA is also void given the strong federal public policy existing at the time of AHF, the Bridge Loans and REPSA, against extending REPSA's ¶ 9 general release to prohibitions and protections enacted in the public interest, such as were Olla's original action's TLA / Regulation Z extended statutory rights of rescission claims, for which reason OJO are void

6. Whether Olla's instant efforts at post-judgment Relief of Vacatur of OJO challenge any issue decided by the September 13, 2011 Unpublished Opinion, Appeal No. 40367-6-II (OLLA v. WAGNER ET AL.) affirming OJO, such that Vacatur, post-mandate, might be barred under RAP 12.2

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8. Whether Subject Judgments and Orders were products of Respondents' extrinsic Fraud upon the Court, including concealment of the grounds on which Olla sought Vacatur of OJO, and bad-faith false assertion that Olla's CR 60 (c) action involved re-litigation, and his CR 60 (b) motions to vacate were based on errors of law

V. ARGUMENT IN REPLY TO RESPONDENTS' BRIEF'S STATED ISSUES AND RELATING TO OLLA'S STATED ISSUES IN REPLY

A) (in overall Reply to Respondents' Brief and with respect to all Issues in Reply):

Olla furnished both Judge Houser and Judge Hull with evidence proving that the Bridge Loans are illegal and void as a matter of public policy, and thus that REPSA is illegal and void as a matter of public policy, which establish extraordinary circumstances of irregularity extraneous to the action of Judge Hartman in indication that OJO are in manifest injustice to Olla

Judge Houser and Judge Hull ignored the evidence that Olla provided them that the Bridge Loans and REPSA are null and void[6], and Respondents have failed to respond to the facts of the Bridge Loans' multiple violations of the Washington State MBPA (RCW 19.146 Et Seq.) and the Federal TLA (15 U.S.C. §§ 1601 Et Seq.) statutory prohibitions enacted in the public interest (CP 2699-2737; 2644-3460' CP 1338-1358), just as they failed in their respective January 29, 2016 CR 12 (b) (6) Motion for Dismissal (CP 4537-4538, 4539-4600), and also for effective Denial, of Olla's CR 60 (c) independent action at Equity for Vacatur of OJO, and in their February 18, 2016 Brief jointly in Opposition (CP 1841-1853) opposing Olla's two Motions to Vacate (CP 1285-1739; 5413-5454, as well as by and through their attorney Isaac A. Anderson's February 18, 2016 Declaration in

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[6] Olla well apprised (CP 2699 that "[each] of the Loans violated a prohibition and / or requirement set forth by RCW 19.146.0201 through 19.146.080, inter alia, as follows" (CP 2699-2716, listing 21 (twenty-one) violations of MBPA and TLA by Wagner, as an individual, having made and arranged, without a license, the Bridge Loans[6]; or by RHWPP by and through Wagner's act, as Trustee of RHWPP, and thus RHWPP, itself[6], having either made and arranged and / or extended the Bridge Loans) that all contracts were illegal based thereon. (CP 2697-2698, citing to Waldron for Debtors Denney & Denney v. A+ Plus Cash, LLC and Theodore Jacobs, and Lending and Leasing 4U, United States Bankruptcy Court for the Western District of Washington at Tacoma, Case No. 06- 41877 (December 6, 2007) in re Adversary No. 07-4043 (a true and correct copy of which case was provided as Ex. 124 to the Affidavit of Mark Olla (CP3410-3425) in support Olla's October 5, 2015 Complaint) ("Denny")[6] and recognizing that a person performing acts of a mortgage broker may have been exempt from MBPA' s RCW 19.146.200 (1) mortgage license requirement, yet in any case remain subject to the prohibitions set forth by MBPA in RCW 19.146.0201 through 19.146.080. Given such violations of the Bridge Loans, Olla's Appeal is at the opposite end of the spectrum from a frivolous Appeal, which is one that "is so totally devoid of merit that no reasonable possibility of reversal exists." Hernandez v. Stender. 2014 WL 10598094 (2014) at *4 (citing Protect the Peninsula's Future v. City of Port Angeles, 175 Wn. App. 201, 220, 304 P.3d 914, review denied. 178 Wn.2d 1022, 312 P.3d 651 (2013)).

support of that Brief (CP 1854-1875), See also CP 1338-1358; MBPA and TLA applied: CP 2657 lines 1-9; CP 2690-2696; p. 28 of Appellant's Brief.

i) *Violation of RCW 19.146.200 (1) prohibition against a person performing an act of a mortgage broker without first obtaining a Washington State mortgage broker's license*[7]*, which occurred when Defendant Wagner, as an individual made the September 18, 2007 Agreement to Hold Funds ("AHF") (CP 2821) with Olla only*[8].

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[7] CP 2696, 2697; 2690-2691; 2690-2702; CP 2686, lines 13-26 through 2687 line 6, noting that even, pursuant to RCW 19.146.0201, had Wagner fit any available exemption from MBPA's mortgage license requirement, each of the Bridge Loans is still null and void for having contained terms that violated prohibitions and requirements set forth in RCW 19.146.0201 through 19.146.080). Pursuant to RCW 19.146.0201 (11), such prohibitions and requirements included TLA, as amended by HOEPA (CP 2697, lines 17-21-2698, line 18-CP 2699, line 8) since: At the times Wagner made and arranged the Bridge Loans, RCW 19.146.0201 stated it was a violation of MBPA for a "loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020 (1) (e), (g) or (4)" to: 1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lender or to defraud any person; (2) Engage in any unfair or deceptive practice toward any person; (3) Obtain property by fraud or misrepresentation; ... (6) Fail to make disclosures to loan applicants and non - institutional investors as required by RCW 19. 146.030 and any other applicable state or federal law; (7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, o other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising (11) Fail to comply with any requirement of the truth-in-lending act, 15 1 Sec. 1601 Et Seq. and Regulation Z, 12 C. F. R. Sec. 226... ; (13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070; ...'
RCW 19.146.0201 (1), (2), (3), (6), (7), (11), (13)" (CP 2699, lines 9-18)

[8] Respondent's Brief's Section III (Introduction, p.3) omits response to the fact that the first of the Bridge Loans was illegal as a result of this violation, Notably, in their reliance upon this state's common law in deciding claims in contract disputes and in relation to contract law formulation [Rodgers v. Seattle-First Bank, 40 Wn. App. 127, 131 (1985)], Washington State courts follow the objective theory of contracts as focusing on the objective manifestations of the agreement at hand [Hearst Communications, Inc. v. Seattle Times Co., 154 Wn. 2d 493, 504 (2005) ["We do not interpret what was intended

Wagner, as an individual, represented himself as capable of making, arranging and extending a loan to be secured by real property in the State of Washington. AHF stated that Wagner would be extending the loan with his own funds. However, the first of the Bridge Loans was in fact extended to Olla by a different Respondent-Defendant, THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE ROBERT H. WAGNER PENSION PLAN) ("RHWPP"). Wagner knew this, which is why he had Olla pay the fee for AHF to

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but what was written."] and will impute to a person an intention corresponding to the reasonable meaning of her words and acts [Santos v. Dean, 96 Wn. App. 849, 854 (1999)] as in determination of contractual intent of the parties to a contract including both written agreements and the context within which those agreements were executed [Chatterton v.Business Valuation Research, Inc., 90 Wn. App. 150, 155 (1998), public policy concerns and the courts' unwillingness to aid illegality necessarily supercede any broad based contractual intent of the parties as memorialized by written agreement to release unknown claims as unspecified, and thus extending to fraud, between parties theretofore existing and to any extent, let alone non-existent obligations and hence subject matter to settle thereby. Such general common law approach only thus only finds unfettered application to the parties' September 18, 2007 Agreement to Hold Funds whereby OLLA was made to believe, based upon the manifestations of the Defendant ROBERT H. WAGNER as an individual, that said Defendant was making a loan to OLLA from his own personal funds and not from a pension plan of which other parties were a member. Wagner did not thus fall within any exception to licensing under RCW 19.200 (1), and AHF and the first of the Bridge Loans were thus void as a matter of public policy. Notably, the savings clause in any void contract is also unenforceable. See, Golden Pisces, Inc. v. Fred Wahl Marine Constr., Inc., 495 F. 3d 1078, 1081-82 (9th Cir. 2007).

RHWPP. (CP 2676-2677)[9]. Let this Court note that, when interpreting a written contract, courts may consider extrinsic evidence to ascertain the parties' intent, Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 84, 60 P.3d 1245 (2003), including parties' subsequent acts and conduct. Id. *However, admissible extrinsic evidence does not include evidence that would vary, contradict, or modify the written word.* Lee, citing to Hollis v. Garwall, Inc., 137 Wn.2d 683, 695, 974 P.2d 836(1999). Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions." WAC 208-660-008 (5). The prohibitions and requirements set forth by RCW 19.146.0201 through RCW 19.146.080 were applicable to each of the Bridge Loans without regard to whether each one was a residential mortgage loan, or a bridge loan, or a loan that had not been for the purpose of personal

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[9] September 18, 2007 Agreement to Hold Funds (CP 2674-2680), without having first obtained a Washington State mortgage broker's license to do so (CP 2649, lines 2-15; see also CP 2688 recounting that Wagner admitted as evidentiary fact (see also CP 2744, lines 13-17 in such regard) at trial before Judge Hartman that he was not licensed as a mortgage broker by the State of Washington). Said Agreement charged Olla a non-refundable Seventeen Thousand Dollars ($17,000.00) for terms of said first Loan which was funded by a pension plan as Wagner apparently knew it would be, that is, an entity which is not the person of Wagner, recording that: "During his direct examination of Wagner, in Trial proceedings on the date of November 17, 2009 said Defendant admitted he was not licensed as an individual in the state of Washington to make or broker a loan in the state of Washington. Direct and incontestable proof of such is provided as Ex. 10 to AMO, which is the appertaining excerpt from the Official Report of Proceedings for trial date November 17, 2009 as prepared by official Kitsap County Superior Court reporter Leslie J. Thompson."

household or family use. Because each of the Bridge Loans was arranged, made and extended in violation of one or more of the prohibitions and one or more requirements set forth by RCW 19.146,0201 through 19.146.080, it was in violation of the law the State of Washington and was thus illegally made and void.

ii) Violation of RCW 19.146.0201 (6):

ii) Violation of RCW 19.146.0201 (11), i.e. heightened protections, prohibitions and requirements codified by HOEPA amendment to TLA (CP 2705-2709).

iii) Violation of RCW 19.146.0201 (11): by violation of 15 U. S. C. § 1611, AHF encompassing false and inaccurate information that Wagner as an individual would be the creditor for the First Subject Loan: that the second deed of trust ("DT2") on CA Property was only securing the First Subject Loan's additional funds of $188,225, and failing to state both the amount financed by, and the finance charged for, each of the hence illegal Bridge Loans.

iv) Violation of RCW 19.146.0201 (11) through violation of TLA's 15 U. S. C. § 1632 (a) that disclosure of the finance charge total must be prominently and conspicuously disclosed (CP 2711).

v) Violation of RCW 19.146.0201 (11) through violation of 15 U. S. C. § 1638 a) (1) TLA-required disclosure of creditor name and 15 U. S. C. § 1638 (a) (2) (A) required disclosure of the amount financed (CP 2704-2705)

vi) Violation of RCW 19.146.0201 (11) by violation of TLA's 15 U. S. C. 1635 (a) requirement for disclosure of the obligor's right to rescind the transaction and render security interest(s) created by the transaction void pursuant to 15 U. S. C. § 1635 (b).

vii) The third of the Bridge Loans' violation of RCW 19.146.0201 (11): of RCW 19.146.0201 (11) prohibition on charging a fee for the modification of a loan contract and deferral of fees set forth in 15 U. S. C. § 1639 (s) such that,

"A creditor, successor in interest, assignee or any agent of any of the above may not charge a consumer any fee to modify, renew, extend or amend a high-cost mortgage, or to defer any payment due under the 5 terms of such mortgage."

viii) CP 2712: Violation of RCW 19.146.0201 (11), as each Subject Loan failed to comply, and per 15 U.S.C.§1639 (j) to deliver disclosures of material loan terms as required for each Loan that was an HOEPA loan.

ix) CP 2712-2713: Violation of RCW 19.146.0201 (11) by way of each of the Bridge Loans that was an HOEPA loan violating the applicable restriction against any HOEPA loan financing points and fees as had been set forth by HOEPA at 15 U. S. C. 1639 (m).

x) CP 2713-2718: Violation of RCW 19.146.0201 (11) by violation of the 15 U. S. C. § 1639 (e), non-timely disclosure that the first of the Bridge Loans contained a balloon payment to be paid by Olla to RHWPP within five (5) years but not timely disclosed to Olla as Borrower, in violation of the 15 U. S. C. § 1633 (a) (4) requirement that a payment balloon be disclosed at least three (3) days in advance of consummation, provided the particular loan including the balloon payment term qualified as a "bridge loan" connected with the acquisition or construction of a dwelling intended to become the consumer' s principal dwelling, pursuant to 15 U.S.C. § 1639 (b) and 12 C.F.R. § 226.32 (d) (1) (i).

xi) CP 2713: The first of the Bridge Loans' violation of RCW 19.146.0201 (1) based on the fact that *AHF deceptively concealed the true party in a transaction.* Stephens v. Omni. Ins. Co., 138 Wn. App. 151, 159 P. 3d 167 (2007); Floersheim v. Fed. Trade Comm'n, 411 F. 2d 874, 876-77 (9th Cir. 1969).

xii) CP 2713: Violation of RCW 19.146.0201(3) prohibition against a person obtaining property by fraud or misrepresentation in the course of

performing acts as a mortgage broker for Washington State real property or for Washington State resident consumers, via AHF and REPSA..

xiii) Violation of RCW 19.146.0201 (13): by charging Olla $17,000.00 for AHF, said amount non-refundable had Olla had not chosen to proceed with the Subject Loan, the individual Wagner attempted to and did collect a fee forbidden by RCW 19.146.070 (1), prohibiting a broker from receiving a "fee, commission or compensation of any kind in connection with the preparation, negotiation and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker."

xiv) Violation RCW 19.146.0201 by Wagner, as an individual, who prepared and signed his name as Broker on each Bridge Loan's mortgage loan disclosure statement, but failed to indicate whether funds for that particular loan "may/will/will not be made wholly or in part from broker controlled funds in Section 10241 (j) of the [California] Business and Professions Code."

xv) CP 2714: Violation of RCW 19.146, 0201 (3): Wagner, as Trustee of RHWPP, sought and did obtain Olla's signature on REPSA by deception, based upon his representations that Olla had no option in avoidance of foreclosure other than to "settle obligations" under the Bridge Loans.

xvi) CP 2715: Violation of RCW 19.146.095 (1): As an individual Wagner made and arranged the Bridge Loans in violation of his fiduciary duties to borrower Olla, inclusive of acting in Olla's best interest (RCW 19.146.095 (1) (a)) and providing full disclosure of all material facts that might affect Olla's ability to receive the intended benefit from the loan (RCW 19.146.095 (1) (c)), and not telling Olla more than 3 days before the first Bridge Loan he'd be required to also give a deed of trust for $1.7 million against CA Property. State of Washington v. Reader's Digest Ass'n, 81 Wn. 2d 259, 276 501 P.2d 290 (1972), an example of a case holding a contract as void for being unlawfully in violation of a statute.

xvii) CP 2717-2719: Each Bridge Loan was usuriously extended, CP 2674, FN 67, due to the fact: financing an origination fee or other points & fees was prohibited for said Loan pursuant to Washington State law.

Each of the Bridge Loans was thus illegally made and not validly formed for which reasons none of alleged obligations thereunder could be settled by REPSA[10], Bankston v. Pierce County No. 42850-4-II (May 21, 2013) Wash. Court of App, Div. II (Washington State courts remain predisposed to refusing to enforce a contract that is illegal as in violation of a Washington State statute or law, or is against public policy[11].

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[10] (See Weese v. Schukman, 98 F.3d 542, 552-5, 101h Cir. 1996), quoting Rozier v. Ford Motor Credit Co., 573 F.2d 1332, 1338 (5th Cir. 1978)) (CP 2696, citing inter alia In re Marriage of Hammack, 114 Wn. App. 805, 810- 11, 60 P. 3d (2003, Platt Elec. Supply, Inc. v. City of Seattle, Division of Purchasing, 16 Wash. App. 265, 555 P. 2d 421 (1977), In re Marriage of Pippins, 46 Wn. App. 805, 808, 732 P. 2d 1005 (1987), Machen, Inc. v. Aircraft Design, 65 Wn. App. 319, 333, 828 P.2d73(1992) (citing Hederman v. George, 35 Wn. 2d 357, 212 P. 2d 841 1949), review denied 120 Wn. 2d 1007 (1992), Evans v. Luster, 84 Wn, App. 447, 450-51, 928 P.2d 455 (1996), St. John Farming, Inc. v. D. J. Irvin, 25 Wn. App. 802, 609 P. 2d 970 (1980) These cases reinforce the longstanding legal principle that a contract that is either illegal or violates public policy is void and wholly unenforceable. In re Marriage of Hammack 114 Wn. App, supra at 810-811, 60 P.3d 663 (2003) ("Washington State courts are pre-disposed to conclusions of law that judgments which are manifestly unjust, especially where the contract or agreement that was the subject of the subject judgment violated public policy or law, are void." This appellate court in Hammack, 114 Wn. App. supra at 810-811 (2000), 810, 819-820 held that a contract that "seriously offends law or public policy is 'void ab initio' or null from the beginning...", quoting Helgeson v. City of Marysville, 75 Wn. App. 174, 180 n.4, 881 P. 2d 22 1042 (1994) (quoting BLACK'S LAW DICTIONARY 1574 (6th ed. 1990)), and if such contract be the determination of the illegality of the Bridge Loans does not involves a fact-intensive question of fact that can only be determined through a trial, given the MBPA and TLA are strict liability public interest statutes.

[11]See also CP 2696 FN 150 explaining that Olla could not have been sued in counter-claim for breach of contract REPSA since REPSA illegal and void. Fluke Corp. v. Hartford Accident Indus. Co., 102 Wn. App. 237, 245, 7 P. 3d 825 (2000), aff'd 145 Wn. 2d 137 (2001) also reinforces the longstanding legal principle that a contract that is either illegal or violates public policy is void and wholly unenforceable. See also, Sherwood & Roberts-Yakima, Inc. v. Leach, 67 Wn. 2d 630, supra at 636, 409 P. 2d 160 (1965).

B) in Reply to Respondents' issue no. 1 and Issues in Reply Nos. 1-8:

Judge Houser's Order of Dismissal and subsequent Summary Judgment on Respondents' counter-claims was in judicial error warranting Reversal on Appeal; additionally, Respondents' counsel Anderson procured such through extrinsic Fraud upon the Court

Respondents' Brief never responds to the fact that Olla's consolidated CR 60 (c) independent action at Equity for Vacatur of OJO (CP 2732-2745 of Olla's October 5, 2015 First Amended Complaint; CP 1841-1853) Fourth Cause of Action for Vacatur, based upon first three causes of action), like Olla's first Motion to Vacate OJO (CP 1285-1739, 5413-5444) before Judge Hull, sought Vacatur of OJO pursuant to CR 60 (b) (11) on the basis of extraordinary circumstances involving irregularity, extraneous to the action of the to the action of Judge Hartman / the court (CP 2732-2733; CP 2738-2739) sustaining REPSA, given that the Bridge Loans, whose payment obligations REPSA purports to settle, and REPSA, are, for the above reasons that they were illegally made, arranged and extended, all void as a matter of public policy then applicable to them, which extraordinary circumstances indicate OJO to have been in manifest injustice to Olla because the contract or agreement, REPSA, in "settlement" of illegal and void Bridge Loans, as the subject of the Subject Judgment in question, violated public policy or law. See In re Marriage of Jennings, 138 Wn. 2d supra, at 625-626, 980 P. 2d 1248 (1999). Since REPSA, purporting as its subject matter the settlement of obligations

under illegal and void loans, created no legal obligation, REPSA is void also firstly as a matter of Washington State public policy[12]. Additionally, REPSA's ¶9 general release of liability renders REPSA void as a matter of public policy, involving an irregularity extraneous (CP 2741; see p.3 of Appellant's Brief),

OJO were in manifest injustice for which reason Vacatur is warranted, and Olla's Consolidated Case did not constitute re-litigation and its claims not susceptible to preclusive effects of merger and bar under the doctrine of Res Judicata / Collateral Estoppel (CP 2668-2669)[13]. Respondents

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[12] In Hammick, 114 Wn. 805, supra at 811, this Division Two of the Washington State Court of Appeals, moreover, noted that an instrument that is "intimately connected" to an illegal instrument is likewise tainted and unenforceable, citing Sherwood, 67 Wn. 2d, supra at 637, and further yet noted,citing to Cascade Timber Co. v. N. Pac. Ry., 28 Wn. 2d 684, 708, 184 P.2d 90 (1977) A judgment giving legal effect to a contract which sustains, is in furtherance of, is related to or is part of an illegal contract is void, so OJO as to Olla's OA's claims met the criteria recognized by cases such as Washington State Court of Appeals, Division I's Ensely v. Pitcher, 152 Wn. App. 891 (2009) and Landry v. Luscher, 95 Wn. App. 779, 780, 976 P.2d 1274 (1999), or the federal case of Weese v. Schukman, 98 F.3d 542, 552 (10th Cir. 1996), citing Robinson v.Audi Aktiengesellschaft, 56 F. 3d 1259, 1266 (10th Cir. 1995), (emphasis added) (quoting Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), cert. denied, 116 S. Ct.705(1996), for preclusion thereof.

[13] Respondents disregard (CP 2670) that the doctrine of collateral estoppel by judgment is confined to "ultimate facts" (which are fact directly at issue upon which the claim rests), and "does not extend to evidentiary facts (facts which may be in controversy but rest in evidence and are merely collateral). The view that a judgment is res judicata on every matter that could and should have been litigated in the action must not be interpreted to mean that a plaintiff must join every cause of action which is joinable when he commences an action against a given defendant (CP 2670 FN 27: While Washington State Superior Court CR 18 permits joinder of claims, it does not require such joinder, and the rule is universal that a judgment upon one cause of action does not bar suit upon another cause that is independent of the cause that was adjudicated. 50 C.J. S. JUDGMENTS 668 (1947); 46 Am. Jur. 2d JUDGMENTS 404 (1969)).

disregard and fail to respond to the fact that OJO gave legal effect to REPSA and its ¶9 general release of RHWPP and its agents from liability to Olla on the Bridge Loans, daring to extend said release to Olla's TLA / Regulation Z extended statutory rights of rescission claims (First Cause of Action of Olla's June 25, 2009 Complaint). Said statutory protection had been enacted in the public interest as to each of the Bridge Loans. REPSA ¶9 violated strong federal public policy (Olla's September 28, 2015 Complaint and Olla's December 22, 2015 Motion to Vacate OJO, citing to Parker and Mills cases, passim) against the enforcement of contracts releasing a right or protection enacted in the public interest[14].

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[14] See December 22, 2015 Motion to Vacate at CP 1304, lines 24-26 through 1305, lines 1-15, noting in pertinent part that "[t]he appellate court in Hammack, 114 Wn. App. supra . . . at 810, 819-820 further noted that a contract that "seriously offends law or public policy is 'void ab initio' or null from the beginning..." (quoting Helgeson v. City of Marysville, 75 Wn. App. 174, 180 n.4, 881 P. 2d 1042 (1994) (quoting BLACK'S LAW DICTIONARY 1574 (6th ed. 1990), and if such contract be the the subject of and in whose favor the judgment in question has been rendered, that judgment must be vacated that by a court as such and even if the final order is not appealed. See In re Marriage of Pippins, 46 Wn. App. 805, 732 P, 2d 1005 (1987)). Washington State Courts hold that contractual provisions in conflict with terms of a legislative enactment are illegal and unenforceable. Machen. Inc. v. Aircraft Design, 65 Wn, App. 319, 333, 828 P. 2d 73 (1992) 73 (citing Hederman v. George, 35 Wn. 2d 357, 212 P. 2d 841 (1949), review denied 120 Wn. 2d 1007 (1992) Said courts hold that a contract that is illegal is void, that is, null from the beginning and unenforceable by either party, In re Marriage of Hammack, 114 Wn. App. 805, 810- 11, 60 P. 3d (2003), and that a contract that is illegal is void, that is, null from the beginning and unenforceable by either party, citing to Sherwood& Roberts-Yakima, Inc. v. Leach, 67 Wn, 2d 630, 636, 409 P. 2d 160 (1965). See Fluke Corp. v. Hartford Accident & Indem. Co., 102 Wn, App. 237, 245, 7 P. 3d 825 (2000), aff'd, 145 Wn.2d 137 (2001); Bankston v. Pierce County, 174 Wn. App. 932, 301 P. 3d 495 (2013) (Court of Appeals, Div. II, of the State of Washington, No. 42580-4-II., decided May 21, 2013). Said courts will not enforce contracts that are either illegal, contrary to public policy or even connected to illegality. Golberq v Sanglier, 96 Wash. 2d 874, 639 P. 2d 1347 (1982). An illegal contract is void, even if both or one of the parties knew of the illegality at the time of formation. Evans v. Luster, 84 Wn, App. 447, 450-51, 928 P. 2d 455 (1996)."

Appellant's Brief clearly states that Olla's Consolidated Case before Judge Houser was an independent action at Equity authorized by CR 60 (c) for Vacatur of Judge Hartman's OJO[15], not re-litigation to which the doctrine of Res Judicata and / or its Collateral Estoppel aspects can even apply as merger and bar by which to preclude either Olla's October 5, 2015 First Amended Complaint or Olla's September 28, 2015 Complaint.

Respondents' Brief's reliance on Sweeney v. Frank Waterhouse & Co., 43 Wash. 613, 86 P. 946 (1906) (Respondents' Brief, p. 17) is thus misplaced[16]

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[15] CR 60(c) provides: "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." See Freeman v. Bergan, Court of Appeals of Washington, Division One, No. 64274-0-I. Filed: September 13, 2010. The Washington State trial courts have broad discretionary power to fashion equitable remedies. Niemann v. Vaughn Cmty. Church, 154 Wn.2d 365, 385, 113 P.3d 463 (2005).

[16] Olla's Consolidated Case before Judge Houser was not "the same as the complaint in the former action", its "subject matter" was not the same and its points not only not raised before Judge Hartman but were not relevant to raise before OJO. Olla's Consolidated Case for Vacatur cannot in good conscience be said to represent "piecemeal" litigation of any kind, and Olla has not split his causes of action between his underlying original action and his Consolidated Case before Judge Houser. Olla did not advance additional claims in his Consolidated Case as another stab at liability of Respondents. Thus, the court opinion in Sweeney is to no avail for Respondents. Nor is Respondents' effort to have this Court rely on Perlus v. Silver, 71 Wash. 338, 128 P. 661 (1912). Respondents' complete mischaracterization of Olla's Consolidated Case in the hopes that Vacatur not be adjudicated by Judge Houser was a true Fraud upon the Court, being extraneous to the action of the Court in regard to issues in the Case. Said Fraud defiled the judicial machinery of the court by preventing adjudication of Olla's claims against Wagner as an individual with respect to AHF Wagner had made as an individual. Judge Houser erred by dismissing Olla's CR 60 (c) action in Equity for Vacatur of OJO because he did not possess substantial evidence that Olla's action had not raised claims, including, primarily, that for Vacatur of OJO. On a Motion to Dismiss for failure to state a claim under CR 12 (b) (6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 f. 3d 336, 337-38, and "substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." Cingular Wireless, L.L. C. v. Thurston County, 131 Wash. App. 756, 768, 129 P.3d 300 (2006).

This Court's September 13, 2011 Unpublished Opinion in re Appeal No. 40367-6-II (OLLA v. WAGNER ET AL. / Olla v. Wagner, 163 Wash. App. 1028 (2011)) (CP 5103-5114; 2096-2107; 2830-2841) affirming OJO, evidences that this Appellate Court did not review the issues of the illegality of the Bridge Loans, being that there this Court limited its review to the issues of Olla's choice-of-law issues indicated a lack of subject matter jurisdiction as well as to "whether the unchallenged Findings justify the trial court's conclusions of law" (CP 2105)[17].

Though in that first Appeal from OJO by Olla, this Court accepted as "verities" all of Judge Hartman's Findings, among which were whether Olla was under duress when he executed REPSA or was unduly influenced, none of those Findings go to any of the grounds on which Vacatur is presently sought, or any issues raised by Olla's instant Appeal, Appellant's Brief and this Reply Brief.

Also, though in that first Appeal, this Court upheld Judge Hartman's Conclusion of Law that 011a is estopped from advancing any and all of his

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Clearly, because Res Judicata could not apply to Olla's action for Vacatur according to the standard manifest injustice, Judge Houser had no substantial evidence that Olla's action lacked claims upon which relief requested might be granted.

[17] This Court declined to review all other issues presented by Olla's Appellant's Brief's given that Brief's failure to have complied with RAP 10.4 (c) by not properly assigning errors and referencing the Record on Appeal (CP 2104-2107; CP 5103-5114; Appellant's Brief, p.36) in such portion of this Court's September 13, 2010 Unpublished Opinion. Seed also, Respondents' Brief, p.8, section 8, admitting to such.

claims against Wagner . . . "[18] (CP 2106: "Accordingly, the trial court properly concluded that estoppel warrants dismissal of Olla's claims") because he "intended to sue Wagner at the time that Olla signed the settlement agreement even though he knew that the agreement contained full mutual releases" (Respondents' Brief, p.8, sub-section 6)[19], is limited to Olla's original lawsuit's causes of action none of which involved claims in common with Olla's present grounds for Vacatur which rest on the illegality of each of the Bridge Loans for violation of one or more statutory prohibitions, all of which Loans and thus REPSA are consequently null and void as a matter of public policy. REPSA is additionally void as a matter of strong federal public policy applicable to it for its ¶9 general release of liability. Washington State courts have long made it clear that, where a contract has been made illegally and contrary to governing statutory prohibition or law regulating its formation as a matter of the public interest, not merely regulating it to ensure revenue for the state, a party to such contract cannot invoke the doctrine of estoppel to enforce it. See, Cooper v. Baer, 59 Wn. 2d 763 (1962), supra at 763-764, citing to State v. Northwest Magnesite Co., 28 Wn. 2d 1, 182 P. 2d 643. REPSA is void as a matter of public policy if its subject matter Bridge Loans are illegal and

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[18] Judge Hartman's Conclusion of Law number 8 (CP 2393)

[19] Respondents' Brief, p.8, section 8, admitting to such.

void as a matter of public policy[20].

Additionally, just because Olla's September 28, 2015 Complaint's First Cause of Action goes on from such point and explains Olla's TLA / Regulation Z claims of extended statutory rights of rescission that were lodged as a First Cause of Action before Judge Hartman (CP 3498-3512) does not mean that they were being relitigated once Vacatur was to be granted by Judge Houser, as such discussion by Olla in that Complaint is obviously included to show that those TLA / Regulation Z claims have not thus been released following Vacatur of OJO as MTV1 states (CP 1322). Olla's extended statutory TLA / HOEPA / Regulation Z rights of rescission were neither forfeited nor terminated by the fact that REPSA contemplated the sale of a deed to each of the Subject Properties, in lieu of foreclosure on the Bridge Loans, since void release of ¶9 and void waiving of rights of ¶10 voided REPSA both outright and in the consideration supporting REPSA in contract. 5That this Complaint seeks disgorgement et al in its Prayer for Relief (CP 2746-2756) of Damages in addition to Vacatur (CP 2746, line 17-26).

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[20] REPSA is not a defense to either Olla's CR 60 (c) action at Equity or Olla's two Motions to Vacate OJO upholding REPSA: the "nonenforcement of illegal contracts is a matter of common public interest and a party to such contract cannot waive his right to set up the defense of illegality in an action thereon by the other party . . . it becomes the duty of the court to refuse to entertain the action . . . Validity cannot be given to an illegal contract through any principle of estoppel . . ." Id, at 764, citing to Reed v. Johnson, 27 Wash. 42, supra, 67 Pac. 381.

Olla's October 5, 2015 First Amended Complaint seeks Vacatur of OJO according to the standard of manifest injustice based on extraordinary circumstances, as recognized by applicable prevailing case law authority as grounds to vacate a judgment or order pursuant to CR 60 (b) (11), established by the fact that each of the Bridge Loans was an illegal contract, in violation of one or more prohibitions of the MBPA and / or TLA, each of which are a statute or law, that remains void ab initio against public policy, created no payment obligations of Olla to RHWPP that REPSA identifies as its subject matter let alone consideration for RHWPP to have made under REPSA in the form of excuse of such legally invalid payment obligations (Appellant's Brief, pgs. 3-6; see also, Appellant's Brief, p. 8-10 at Issue Judge Houser Nos. 2, 3 &

Said Complaint made very clear to Judge Houser these extraordinary circumstances extraneous to Olla's Quiet Title action, as had been based primarily on the First Cause of Action claims therein based upon extended statutory rights, under TLA / HOEPA / Regulation Z, of rescission as to each of the Bridge Loans for RHWPP failure to have provided Olla timely if any notice of his three-business-day right to cancel as to each of said Loans. On the basis of such, said First Amended Complaint states that it "seeks from the lower court a "balancing the equities by vacation or otherwise

where contracts have been proven to have been illegal. Bankston v. Pierce County, 174 Wn. App. 932, 301 P. 3d 495 (Court of Appeals of Washington, Division 2, 20 No. 42850- 4-d, decided on May 21, 2013), citing to In re Marriage of Hammack, 114 Wn. App, supra at 21 810-811, 60 P. 3d 663. . . ." (CP 2666, lines 17-21) See also CP 2734: The courts of the State of Washington will not enforce contracts that are either illegal, contrary to public policy or even connected to illegality. Golberg v. Sanglier, 96 Wash. 2d 874, 639 P. 2d 1347 (1982); see also, Hammack v. Hammack (aka In Re Marriage of Hammack), 114 Wash, App. 805, supra, 60 P. 3d 663 (2003)

Hammack, 114 Wn. 805, supra at 811, is particularly important but conspicuously absent from Respondents' Brief's arguments, thus Respondents concede Olla's argument re Hammack. In that case, this Court of Appeals affirmance of the trial court's motion to vacate a judgment of marital dissolution pursuant to a settlement agreement that contained a waiver of child support as part of the consideration offered for the settlement agreement, which waiver was illegal as in violation of a statute, and therefore null and void and deemed by this Court to be an irregularity extraneous to the action of the trial court and demonstrating that the marital dissolution judgment was properly vacated as having been in manifest injustice to the motioning party to the case, regardless also that, as a result, the settlement agreement there failed for lack of consideration

offered by that motioning party who had waived child support. OJO, like the marital dissolution judgment in Hammack, gave legal force to a settlement agreement, like in Hammack not of claims in an ongoing lawsuit, but of purported payment obligations under the Bridge Loans, where the settlement agreement subject matter was similarly void for an illegal release, being RHWPP liability, that was against strong federal public policy enunciated by the federal cases of Parker and Mills (Appellant's Brief pgs. 62-65), infra., as well as because the Bridge Loans were themselves void such that REPSA's subject matter was both null and void and against public policy. By and through OJO, "Judge Hartman specifically concluded Olla's Truth in Lending Act violation claim was 'knowingly and voluntarily released by Olla as part of the settlement agreement." CP 1264.

In Hammack, the Court explained that "[t]he extraordinary circumstances 'must relate to irregularities extraneous to the action of the court'. In re Marriage of Tang, 57 Wash.App. 648, 655-56, 789 P.2d 118 (1990) (quoting In re the Marriage of Yearout, 41 Wash.App. 897, 902, 707 P.2d 1367 (1985)). Errors of law may not be used to vacate a judgment. In re Marriage of Thurston, 92 Wash.App. 494, 499, 963 P.2d 947 (1998), review denied, 137 Wash.2d 1023, 980 P.2d 1282 (1999). Olla's secondary grounds for Vacatur based on the fact that OJO are void

as having been entered in violation of Olla's Constitutional Fourteenth Amendment right to procedural due process of law also involves matters extraneous to the action of Judge Hartman in relation to the causes of actions and their related claims and issues that were before him.

The case of In re Marriage of Hong, No. 39074-4-II, at this Court of Appeals of Washington, Division Two (August 5, 2010) offers a clear delineation of what errors of law are and why they are reserved for direct appeal. In that case this Court of Appeals, Division II enunciated the basic rule, as echoed by Respondents in their Brief, that errors of law in a judgment may not be corrected by a CR 60 motion because they must be properly raised in a direct appeal of the judgment[21]. Moreover, review of the denial of a CR 60(b) motion is limited to "the propriety of the denial not the impropriety of the underlying judgment." Bjurstrom v. Campbell, 27 Wn.App. 449, 450-51, 618 P.2d 533 (1980)[22].

However, the Respondents' Brief fails to acknowledge that Olla does not seek Vacatur on errors of law as Jerry Hong had in Hong, on grounds

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[21] This appellate court in Hong, citing to In re Marriage of Thurston, 92 Wn. App. at 499 and to In re Marriage of Moody, 137 Wn.2d 979, 991, 976 P.2d 1240 (1999).

[22] "The exclusive procedure to attack an allegedly defective judgment is by appeal from the judgment, not by appeal from a denial of a CR 60(b) motion" citing to Bjurstrom v. Campbell, 27 Wn. App. at 451. This Court also went on to note in Hong that "[s]tated differently 'an unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and appealing the denial of the motion', citing to State v. Gaut, 111 Wn.App. 875, 881, 46 P.3d 832 (2002).

that the trial court's decree granted relief beyond what was pleaded in the petition for dissolution, whether the trial court erred by imposing maintenance obligations on Jerry Hong even after his death, and whether the trial court erred by awarding maintenance without findings of Joni's need and Jerry's ability to pay, *which were all alleged errors of law in the underlying order and judgment*, which Jerry Hong failed to timely appeal.

Notably, Hammack fully accords with prevailing Washington State case law authority contract that is in conflict with statutory requirements is illegal and unenforceable as a matter of law. In re Detention of Brock, 333 P. 3d 494 (2014) citing to Failor's Pharmacy v. Dep't of Soc. & Health Servs., 125 Wn.2d 488, 499, 886 P.2d 147 (1994) (citing Hederman v. George, 35 Wn.2d 357, 362, 212 P.2d 841 (1949)). The case of Denny & Denny v. A+ Cash decided by United States District Court for Western District of Washington, case no. 0-41877, on December 6, 2007.shows how violations of MBPA void the contract making those violations, as does. GROUNDS FOR ENTRY OF ORDER, IN THE MATTER OF DETERMINING Whether there has been a violation of the Mortgage Broker Practices Act of Washington by: INTERSTATE LAW GROUP A/K/A ACCREDITED LAW GROUP and RICHARD SIPAN, Owner and Managing Member, Respondents. perttinent part of which is quoted from as follows: "II. GROUNDS FOR ENTRY OF ORDER: 2.1

Mortgage Broker Defined. Pursuant to RCW 19.146.010(14) and WAC 208-660-006, "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan. Pursuant to WAC 208-660-006, a person "'assists a person in obtaining or applying to obtain a residential mortgage loan' by, among other things, counseling on loan terms (rates, fees, other costs), [and] preparing loan packages...." 2.2 Loan Originator Defined. Pursuant to RCW 19.146.010(11), "loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain: takes a residential mortgage loan application for a mortgage broker; offers or negotiates terms of a mortgage loan; or holds themselves out to the public as able to perform any of these activities."

' While Hammack (Appellant's Brief pgs.50-51, 58-60), is strongly on point in fully establishing why OJO must be vacated based upon extraordinary circumstances involving irregularities extraneous to the action of Judge Hartman[23], the Opinion from Washington State Court of

[23] Hammack also confirms that a court can entertain granting post-judgment Relief from,

Appeals, Division 1 in Lee v. Thaheld / Lee-01, LLC., No. 68417-5-I (Wash. Ct. App. Mar. 10, 2014) ("Lee"), even more on point, and specifically in the context of performance of a contract without the license required to be legally able to perform it. In Lee the trial court held that an unlicensed dentist contracting to perform duties of a dentist in Washington State created an illegal contract that is void and unenforceable. No. 68417-5-I (Wash. Ct. App. Mar. 10, 2014) and also holding that it is correct that,). In re Marriage of Hammack, 114 Wn.App. 805, 810, 60 P.3d 663 (2003). Such a contract is void ab initio, or, in other words null null from the beginning. Id. at 810-11. It is as if the contract was never created, because a void agreement is by definition not a contract. 25 DAVID K. DEWOLF & KELLER W. ALLEN, WASHINGTON PRACTICE: CONTRACT LAW AND PRACTICE § 1:7, at 12 (2d ed. 2007). As in Lee, where the court consequently ruled that the entire relationship between the parties violates Washington law so did the entire relationship between RHWPP and Olla and thus, the entire agreement fails and neither

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or Vacatur of, a judgment or order based upon that judgment's contravention of public policy. Similarly, even Judge Hull's 2012 judgment in denial of Olla's CR 60 (b) (5) motion to vacate OJO based upon lack of subject matter jurisdiction (CP 5148-5149) and this Court's September 24, 2012 Mandate (CP 5157-5161) affirming that 2012 denial by granting RHWPP&W1's Motion on the Merits to Affirm in re Appeal No 42157-7. each confirm that such Relief and Vacatur are not barred by Res Judicata and its collateral estoppel aspects simply because an Opinion on Appeal of affirmance of that judgment or order has been entered and the Mandate issued *if said Opinion did not address the issues relating to those bases*, as authorized by CR 60, on which Vacatur is sought.

could any part of it can be enforced nor settlement of purported obligations arising under it. Applying Lee to even just the MBPA RCW 19.146.200 (1) violation by Wagner in performing the act of a mortgage broker with respect to the September 18, 2007 AHF, making the terms of and arranging for the funds inter alia of the first of the Bridge Loans, such AHF solely between him and Olla, is a direct fit that warrants Vacatur under according to CR 60 recognized standard of manifest injustice based upon extraordinary circumstances.

Moreover, as this Court of Appeals Division 2 noted in its Opinion in Hammack, an instrument that is "intimately connected" to an illegal instrument is likewise tainted and unenforceable, citing Sherwood, 67 Wn. 2d, supra at 637. Under that case law authority framework, REPSA is void ab initio under the circumstances as a matter of public policy, which is another extraordinary circumstance establishing that OJO were in manifest injustice to Olla.

Olla's October 5, 2017 First Amended Complaint makes clear that the doctrine of Res Judicata / Collateral Estoppel cannot be applied (CP 2661, lines 4-10) and most certainly no principle of estoppel.

Olla should have prevailed on the Consolidated CR 60 (c) action before Judge Houser at Equity for Vacatur of OJO because the Bridge Loans were illegally made, arranged and extended in violation of one or more of

the prohibitions of the MBPA and TLA as catalogued in Olla's October 5, 2015 First Amended Complaint, for which reason, per Hammack, REPSA was void as against public policy, irrespective of the fact that its subject matter loan obligations were null and void. And herein lies one of the fallacies of OJO: REPSA was not in settlement of claims in a lawsuit but in settlement of purported loan payment obligations, the excuse of which by RHWPP was the main purported consideration given by RHWPP for REPSA.

C)in Reply to Respondents' issue no. 2 (whether Judge Hull's joint Denial of Olla's two Motions to Vacate was erroneous) and Issues in Reply Nos. 3-8:

Denial of Vacatur by Judge Hull and effectively by Judge Houser was in abuse of judicial discretion as without regard of the fact that OJO was in manifest injustice to Olla, and also in exercise of judicial discretion where none was possessed given that OJO were void as entered in manifest injustice and as entered in violation of Olla's Constitutional Fourteenth Amendment right to procedural due process of law; additionally, said Denial was procured through extrinsic Fraud upon the Court

Judge Hull erred in finding and concluding that Olla's two Motions to Vacate concerned errors of law and were otherwise barred by Res Judicata / Collateral Estoppel, and Respondents' Brief's arguments about errors of law, in refusal to address the Olla's stated grounds for his December 22, 2015 Motion to Vacate OJO according to the CR 60 (b) (11) standard of manifest injustice based upon extraordinary circumstances involving irregularities extraneous to the action of the trial court.

Olla's December 22, 2015 Motion to Vacate, whose two half-analogues are Olla's October 15, 2015 First Amended Complaint and September 28, 2015 Complaint comprising the Consolidated CR 60 (c) action at Equity before Judge Houser, does not seek re-litigation. Irrespective of the fact that this Court did not review the issues of the enforceability of REPSA's general release or the illegality of the Bridge Loans in its September 13, 2011 Unpublished Opinion n re Appeal No. 40367-6 (OLLA v. WAGNER ET AL.) *affirming* OJO, the latter of which issues was not even in issue in Olla's original action, because the court did not review any issues brought then before it, except choice-of-law issues, since Olla's Appellant's Brief in that Appeal did not comply with RAP 10.4 (see CP 2104-2107) requiring citing to the record on appeal, as discussed supra in subsection "*B*" of this Reply Brief's Argument section, supra and also in FN 5, supra, Olla's two CR 60 (b) (11, 5) Motions to Vacate. OJO are not subject to merger and bar under doctrine of Res Judicata / Collateral Estoppel[24].

Olla's Motions to Vacate do not concern errors of law whatsoever: as discussed supra, each of which Motions state clearly that Vacatur of OJO is being sought pursuant to CR 60 (b) (11) on grounds that OJO created

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[24]Respondents' counsel is surely familiar with RAP 12.2 DISPOSITION ON REVIEW, stating in pertinent part that: "After the mandate has issued, the trial court may, however, hear and decide post-judgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court.

manifest injustice to Olla based upon extraordinary circumstances, since the Bridge Loans were illegally made and arranged by Wagner as an individual and extended to Olla by RHWPP as having been otherwise in violation of statutory prohibition under the MBPA at RCW 19146.0201 (1) (e), (g) or (4)[25] and law, and prohibitions and protections of TLA[26], and also on strong federal public policy grounds enunciated by Parker and Mills cases (CP 1760-1767) as in an analogue in Olla's September 28, 2015 Complaint before Judge Houser, supra.

Olla's December 22, 2015 Motion to Vacate before Judge Hull Washington State states (CP 1304-1306) that: courts are pre-disposed to conclusions of law that judgments which are manifestly unjust, especially where the contract or agreement that was the subject of the subject judgment

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[25] RCW 19.146.0201 stated that it was a violation of MBPA for a "loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW § 19. 146.020 (1) (e), (g) or (4)" to (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or 8 lenders or to defraud any person; (2) Engage in any unfair or deceptive practice toward any person; (3) Obtain property by fraud or misrepresentation; . . . (6) Fail to make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 and any other applicable state or federal law; (7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait-and-switch advertising ...(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 Et Seq. and Regulation Z, 12 C.F. R. Sec. 226... ; (13) Collect, charge, attempt to collect or 12 charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19. 146.030 or 19.146.070; ..."

[26] As distinct from the TLA / Regulation Z statutory rights of rescission previously lodged (CP 1287, lines 8-14; see also CP 1758-1759, Olla's Reply in support of said Motion to Vacate as filed in the face of Respondents not having filed a timely Answer to said Motion; see also id at CP 1757; see also CP 1767-1772; see also CP 1779-1780) as in analogue to Olla's October 5, 2015 First Amended Complaint before Judge Houser, supra,

violated a public policy or law, are void[27]. RHWPP was still subject to all TLA prohibitions and protections regardless of whether the first or even all the Bridge Loans are void ab initio for Wagner's failure to have obtained a mortgage broker's license in Washington State for the purposes of arranging the first if not all three of the Bridge Loans. See CP 1305-1312.

Also, as discussed supra, in In re Marriage of Hammack, 114 Wn. App. 805, supra at 810-811 (2000), this Washington Court of Appeals upheld a trial court's decision granting a motion that had been made pursuant to CR 60 (b) (11) for vacation of a judgment as void and unenforceable based upon extraordinary circumstances indicating irregularity extraneous to the action of the trial court in order to overcome a "manifest injustice" because the contract or agreement which was the subject of the subject judgment in question violated public policy or law. See also, In re Marriage of Jennings, 138 Wn. 2d supra at 625-626, 980 P, 2d 1248 (1999). See also, Lane v.

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[27] The Motion shows that TLA applies to bridge loans (CP 1296-1297, explaining that Federal Reserve Board Official Staff Commentary to 12 C. F. R. § 226.23 (a) (1) -- 4 of Regulation Z, special rule for primary dwelling, as was applicable at the times of each of the Bridge Loans, for an explanation of the situation of principal residence in the context of a bridge loan, to which a TLA / Regulation Z extended statutory right of rescission as pursuant thereto. A true and correct copy of said OSC "special rule" is provided as Ex. 36 to said Complaint, Official Federal Reserve Board Staff Commentary ("OSC") 12 C. F. R. § 226.23 (a) (1)- 4 "special rule for principal dwelling", which states:
" 4. Special rule for principal dwelling. When the consumer is acquiring or constructing a new principal dwelling, any loan secured by the equity in the consumer's current principal dwelling (for example, a bridge loan) is still subject to the right of rescission regardless of the purpose of that loan." OSC 226.23 (a) (1)- 4, a true and correct copy of which is provided as Ex.4 to this Complaint. (CP 1774)

Brown & Haley, 81 Wn. App., supra at 105, 912 P. 2d 1040, 1042 1996 (citing In re Marriage of Tang, 57 Wn, A g g, pp., supra at 653, 789 P.2d 118 14 (1990). This Court's appellate decision in Hammack, 114 Wn. App., supra at 810-811, like the decision in Fluke Corp. v. Hartford Accident Indus. Co., 102 Wn. App., supra at 245, 7 P. 3d 825 (2000), aff'd 145 Wn. 2d 137 (2001) also reinforces the long-standing legal principle that a contract that is either illegal or violates public policy is void and wholly unenforceable. See also, Sherwood & Roberts -Yakima, Inc. v. Leach, 67 Wn. 2d, supra at 636, 409 P. 2d 160 (1965). The appellate court in Hammack, 114 Wn. App. supra at 810, 819-820 further noted that a contract that "seriously offends law or public policy is 'void ab initio' or null from the beginning..." (quoting Helgeson v. Cit of Marysville, 75 Wn. App. 174, 180 n.4, 881 P. 2d 1042 (1994) (quoting BLACK'S LAW DICTIONARY 1574 (6th ed. 1990), and if such contract be the subject of and in whose favor the judgment in question has been rendered, that judgment must be vacated by a court as such and even if the final order is not appealed. See In re Marriage of Pippins, 46 Wn. App. 805, 732 P, 2d 1005 (1987). Washington State Courts hold that -contractual provisions that conflict with the terms of a legislative enactment are illegal and unenforceable. Machen. Inc. v. Aircraft Design, 65 Wn, App. 319, 333, 828 P. 2d 73 (1992) (citing Hederman v. George, 35 Wn. 2d 357, 212 P. 2d 841 (1949), review denied 120 Wn. 2d

1007 (1992). All the violations were before Judge Hull who therefore knew OJO to have been in manifest injustice and void[28]. Moreover, a contract which violates a statute or municipal ordinance is illegal and unenforceable [see Evans v. Luster, 84 Wash. App. 447, supra, 928 P.2d 455 (1966)]. Even where such nullity is not specifically directed by the legislature, public policy is generally thought to require it, either to punish lawbreakers by withholding societal assistance from an illegal transaction, or to maintain the integrity of the judicial process[29].

Respondents disregard that, per, CP 2684, Respondents' Motion for Expedited Fact -Finding Hearing, that REPSA' s 9 general release of the Wagner Defendants "from all past and future claims, whether known or unknown, arising out of the loans and the loan documents" could not, per strong federal public policy enunciated in Parker and Mills extend to

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[28] Washington State courts hold that a contract that is illegal is void, that is, null from the beginning and unenforceable by either party, In re Marriage of Hammack, 114 Wn. App. 805, 810- 11, 60 P. 3d (2003), holding that a contract that is illegal is void, that is, null from the beginning and unenforceable by either party, citing to Sherwood & Roberts -Yakima, Inc. v. Leach, 67 Wn, 2d supra at 636, 409 P. 2d 160 (1965). See also, Fluke Corp. v. Hartford Accident & Indem. Co., 102 Wn, App. supra at 245, 7 P. 3d 825 (2000), aff'd, 145 Wn.2d 137 (2001). See also, Bankston v. Pierce County, 174 Wn. App. supra at 932, 301 P. 3d 495 (2013) (Court of Appeals, Div. II, of the State of Washington, No. 42580-11, decided May 21, 2013), The courts of the State of Washington will not enforce contracts that are either illegal, contrary to public policy or even connected to illegality. Golberq v. Sanglier, 96 Wash. 2d 874, 639 P. 2d 1347 (1982). See also CP 1883:

[29] Said courts hold that contracts that are either illegal or against public policy as a matter of law will not be enforced, and particularly where there is legislative action. See, State Farm Gen. Ins. Co. v. Emerson, 102 Wn. 2d 477, 481, 687 P. 2d 1139 (1984); In re Marriage of Fox, 58 Wn. App. 935, 937 n3, 785 P. 2d 1170 (1990) [citing to In re Marriage of Pippins, 46 Wn. App. 805, 808, 732 P. 2d 1005 (1987).

release a statutory right or protection granted in the public interest[30].

Respondents disregard that Judge Hull's Denial of Vacatur of OJO and Judge Houser's effective Denial of Vacatur of OJO by and through his Dismissal of Olla's CR 60 (c) independent action at Equity in and for Vacatur of OJO were in abuse of judicial discretion given there was no tenable argument by which Olla's argument that OJO was in manifest injustice to him or that OJO were void as in deprivation of Olla's U.S. Constitutional Fourteenth Amendment right to procedural due process of law (CP 1366-1367) such that denial of Vacatur constitute an abuse of discretion.

"Discretion is abused when it is exercised on untenable grounds or for untenable reasons." See Lane v. Brown & Haley, 81 Wn, App. 102, 105, 912 P. 2d 1040, 1042 (1996) (citing to In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P. 2d 118 (1990). " An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." Moreman v. Butcher, 126 Wn. 2d 36, 40, 891 P. 2d 72 (1995) (citing State ex rel Carroll v. Junker. 79 Wn.2d 12, 26, 482 P.2d

[30] Respondents disregard that public policy also underlies the legislative purpose effectuated by the rights and protections created by the TLA as well as the prohibitions and requirements of the MBPA. The public policy, as to each is an explicit, well defined policy, as opposed to a general public policy (see TLA at 15 U. S. C. § 1601), RCW 19. 146.005, which is violated by and through violations of MBPA and TLA rights and protections.

775 (1971)). "A decision is based ' on untenable grounds" or made "for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. State v. Rohrich, 149 Wash. 2d 647, 654, 71 P. 3d 638 (2003) (quoting State v. Rundquist, 79 Wash. App. 786, 793, 905 P. 2d 922 (1995). "A decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adopts a view that' no reasonable person would take,' State v. Lewis, 115 Wash. 2d 294, 298- 99, 797 P. 2d 922 (1990), and arrives at a decision 'outside the range of acceptable choices.'"

Olla's December 22, 2015 Motion to Vacate also seeks Vacatur of OJO on the additional grounds that OJO were in deprivation of Olla's Constitutional Fourteenth Amendment right to procedural due process of law which guaranteed full and fair trial on his claims against Wagner as an individual who had made AHF with Olla but fraudulently, but was not and also since Judge Hartman did not allow Olla to adjudicate his First Cause of Action TLA/ Regulation Z-based extended statutory rights of rescission as to each of the Bridge Loans. See also CP 1886: It is clearly established law that a judgment is void if the court that rendered it acted in a manner inconsistent with due process of law. Margoles v. Johns, 660 F. 2d 291, 295 (7th Cir. 1981) citing to V.T.A. Inc. v, Airco, Inc., 597 F. 2d 220 at 224- 25 (10th Cir.

1979); see also, McKay v. Pfeil, 827 F. 2d 540, 543 (9th Cir. 1987)[31].

Olla's February 5, 2015 (CP 5413-5454) Motion to Vacate pertains to the Fraud upon the Court by which OJO were in part obtained, in that Olla's original action's claims against Respondent-Defendant ROBERT H. WAGNER as an individual, with respect to the Agreement to Hold Funds he made, solely as an individual, with Olla were suppressed buried all claims AHF was never adjudicated and states nothing that RHWPP would be creditor, moreover, both does not state the amount of the deed of trust to be taken out on CA Property which said Agreement states required a deed of trust against it only due to additional moving costs additional amount loaned (CP 5418, lines 1-4), and most importantly included deed of trust terms that Wagner knew, from having examined Olla's Washington Mutual Bank first mortgage documents that WaMu First Deed of Trust and Adjusted Rate Note prohibited transfer of Olla's equitable, legal or beneficial interest in his Malibu CA Property by a refinance that without prior permission of WaMu (CP 5423-5424) would accelerate its first mortgage. Judge Hartman and Respondents did so on the false premise the REPSA was between Olla and Wagner, and released RHWPP and its agents only, released Wagner from AHF he made as an individual. But these claims were suppressed by Judge

[31] An essential element of a hearing is one on the merits of the case when a deprivation of property is involved such that the right is to be given to present every available defense and set of facts. See, Lindsay v. Normet, 405 U. S. 56, 66 (1972).

Hartman and OJO thereby were also rendered in violation of Olla's Constitutional Fourteenth Amendment right to procedural due process of law for that reason, being that Judge Hartman did neither thus provide a full and fair trial of Olla's claims nor proceed as an unbiased fact finder. Fraud upon the Court is not an "error of law".

VI. CONCLUSION

The findings, conclusions and Subject Judgments and Orders challenged above must be reversed for the reasons set forth above and in Olla's Appellant's Brief. Olla is entitled to damages for Respondent-Defendants' unjust enrichment, by which RHWPP and its individual members now and at the time of the Bridge Loans and REPSA must now be legally disgorged. This Court should Order Olla compensated by three components of monetary damages: an award of damages over and above, and in addition to, the monetary amount by which RHWPP was unjustly enriched through its sale of CA Property, such award of monetary damages to make Olla whole as according to the value of his equity in CA Property at time of AHF. Then, this Court should Order that Olla be compensated, including but not limited to as prescribed by MBPA and TLA, for the other damages catalogued by the two aforementioned Appendices Olla's October 5, 2015 First Amended Complaint, and its Appendix 3 (CP 2027), as reasonable under the circumstances of extreme unjust enrichment, and based

upon, inter alia, the Bridge Loans' statutory violations. In view of the obvious bias of Judges Houser and Hull, this Court should remand to another superior court for the purposes of a hearing to be conducted expressly thereon and in short order.

Dated: July 24, 2017 Respectfully Submitted,

MARK OLLA, APPELLANT-PLAINTIFF, PRO SE

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DECLARATION OF MAILING

I, Sara Mossman-Grimm, hereby state and declare as follow:

1. I am over the age of 18 (eighteen) years old.

2. I am not a party to the above captioned Appeal.

3. My address is: 200 High School Rd NE #214
Bainbridge Is., WA 98110

4. On Monday, July 24, 2017, I caused to be served the following document in the manner described below:

APPELLANT-PLAINTIFF MARK OLLA'S FINAL REPLY BRIEF

(X) by electronically mailing it, pursuant to the Stipulation of the parties:

Isaac A. Anderson, Esq.
c/o Law Office of Isaac A. Anderson
P.O. Box 1507
10950 State Hwy. 104, Suite 201
Kingston, WA 98346

I declare, under penalty of perjury under the laws of the state of Washington, that the foregoing to be true and correct, to the best of my knowledge, on this day of Monday, July 24, 2017,

Sara Mossman-Grimm

Sara Mossman-Grimm

MARK OLLA - FILING PRO SE

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Appellate Court Case Title:	Mark Olla, Appellant v. Robert H. Wagner, et al., Respondents
Superior Court Case Number:	15-2-01985-8

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